

COURT OF SESSION.

Saturday, May 13.

SECOND DIVISION.

SPECIAL CASE—HARDY'S TRUSTEES AND OTHERS.

Trust Settlement—Conveyance—Titles to Land Act 1868, § 20. Terms of a holograph trust-deed which held sufficient under the Act of 1868 to carry the lease of a farm.

The question under this special case was whether the trust-deed of the late Mr Hardy, farmer, Muirhouse, carried the lease of the farm of Muirhouse to his trustees. This deed was holograph of the grantor, and after the nomination of trustees, gave them full power "to do everything necessary for the comfort of my wife and family; that they entirely take charge of the farm, all means and moveables, until the youngest is twenty-one years of age, and then to be an equal division . . . The whole arrangements are to be wholly through the trustees. They shall also have power to retain or give up the farm, as they see it of most advantage to the family."

The lease of the farm was in favour of "William Hardy and his heirs, the eldest heir-female, on the failure of heirs-male, succeeding without division."

Mr Hardy was survived by his wife and two daughters. The factor *loco tutoris* of the elder daughter claimed the lease as heir.

SCOTT for the trustees.

H. J. MONCREIFF for Mr Hardy.

KEIR for Misses Hardy's factor.

The case of *Pitcairn*, Feb. 25, 1870, 8 Macph. 604, was referred to in the discussion.

The Court unanimously held that the settlement was sufficient to carry the lease of the farm. Before the Act of 1868, the word "dispone," or words of *de presenti* conveyance, were required to convey heritage. That Act did not render a disposition of moveables a disposition of heritage. It did not change the meaning of words. The case of *Pitcairn* was conclusive of this, as in that case the First Division held that the word "effects" could not be construed to include lands. But in the present case the grantor of the disposition intended to convey the lease of the farm to his trustees, who were empowered to give up the lease if they thought it right to do so. It was not possible to give it up unless they had acquired it.

Agent for Hardy's Trustees and for Misses Hardy's Factor—A. Duncan, S.S.C.

Agent for Mrs Hardy—G. V. Mann, S.S.C.

Saturday, May 13.

MACARTHUR (ROSS' FACTOR) v. BALLANTYNE.

Process—Issue—Reclaiming Note—Court of Session Act 1868, § 28—A. S. 10th October 1868, § 6. A pursuer presented a reclaiming note against an interlocutor, holding certain issues as adjusted and settled, and maintained that no issue should have been allowed. *Held* that it was incompetent under the Reclaiming Note to move the Court to vary the terms of the issue.

Counsel for the Pursuer—Mr Watson and Mr Gebbie. Agent—A. Macgregor, S.S.C.

Counsel for the Defenders—Mr Johnston. Agents—Menzies & Coventry, W.S.

Tuesday, May 16.

FIRST DIVISION.

JOHN MOFFAT AND ANOTHER v. JAMES MILLER AND OTHERS.

General Police and Improvement Act—Election—Complaint—Reduction. At an election of Commissioners of Police under the General Police and Improvement Act 1862 (25 and 26 Vict. c. 101) there were four vacancies and seven candidates. A poll was taken, and A, B, C, and D were declared to be elected. E and F stood fifth and sixth on the poll. A complaint was lodged for F in terms of sect. 48, which was referred by the Commissioners to a scrutiny committee, who reported that C was personally disqualified, and that D had a less number of legal votes than E or F, and that, consequently, E and F were elected instead of C and D.—*Held*, in a reduction of the report, at the instance of C and D, that as E had failed to lodge a complaint under sect. 48, it was *ultra vires* of the committee to declare him elected, but that their report in regard to F, being within their powers, was by the statute excluded from review on its merits.

The General Police and Improvement (Scotland) Act 1862 having been adopted in the burgh of Wishaw, four Commissioners fell to be elected under the statute in September 1869. Seven candidates were proposed—Rankin, Gilchrist, Liddell, Moffat, Miller, Watt, Hudspith. A poll was taken on September 6—the result, as declared by the Sheriff, being that the candidates stood in the order just mentioned. The first four were declared to be duly elected. Before the poll began a protest was lodged for Miller against the poll being proceeded with, on the ground of Liddell being disqualified in consequence of failure to pay his rates, and also of certain irregularities in the demand for a poll. The Sheriff received and marked the protest, but gave no decision on the points raised by it. At a meeting of the Commissioners on September 13, Messrs Rankin, Gilchrist, Liddell and Moffat took their seats. Thereupon a written complaint was lodged for Watt in the following terms:—"I, James Watt, baker, Cambusnethan, hereby complain to the Commissioners of the burgh of Wishaw, assembled at their first general meeting, held on the 13th day of September 1869, after the annual election of Commissioners for said burgh, which took place on the 4th and 6th days of said month of September, that I ought to have been returned as a Commissioner at said election, and that I dispute the return of Commissioners made thereat; and I hereby request that inquiry be made into the same in terms of 'The General Police and Improvement (Scotland) Act 1862.'" Three Commissioners were nominated as a "scrutiny committee to inquire into the complaint." On September 20 the committee reported the conclusions to which their investigations had led them—" (1) That at the time of the meeting for electing Commissioners, John Liddell was not qualified to be nominated or elected; (2) that