

assessment, rate, or charge under any Act of Parliament relating to the duties of excise, or the land tax, or assessed taxes, or income-tax—that is to say, that where in any county or burgh the Commissioners have not appointed the officer of Inland Revenue to be assessor, then no valuation made under the Valuation Act is to have any application in the assessment of income-tax. It rather appears to me that by implication, and probably very direct implication, the force of this provision is that where the officer of Inland Revenue has been appointed assessor in any county, it is intended that one valuation shall then come to be operative, not only for local but for imperial taxation. But however that may be, I think it is clear from this provision of the statute that in the circumstances of this case there is a direct provision that the valuation under the Valuation Act shall not apply to the assessments for imperial purposes.

It lies therefore with the appellant to show that under other statutes the rule of the Valuation Act was binding upon the officer of Inland Revenue. Upon that question I have to observe, in the first place, that when the Valuation Act passed there was in existence a separate system of valuation for the purpose of imperial taxation. That system was regulated by two statutes—the 5th and 6th Vict. c. 35, sec. 60, as modified by a statute passed the year before the Valuation Act, viz., the Act 16 and 17 Vict. c. 34; and without detailing the effect of these provisions, I may merely observe that they amounted to this, that where a subject was under lease for a period of years, and the lease had gone beyond its seventh year, the rent in the lease was not to be taken as the rule of valuation. Now, the Valuation Act 17 and 18 Vict. contains no repeal of the clauses to which I have referred, which have hitherto regulated imperial taxation. If it had been intended to substitute an entirely new system in place of that which was in existence under these statutes, I think it would be reasonable to expect repealing clauses.

But I agree with your Lordships, after an examination of the Valuation Act, in holding that, taking the clauses as a whole, the purpose of it was to introduce a roll which has proved of great value, but which it was intended should regulate only the matter of local taxation, municipal and county rates, and rates of that kind. I do not think it necessary to go over the provisions of the statute, but there are many indications which satisfy me on an examination of the statute as a whole that that is so. Is it possible then to maintain that the roll provided under section 6 of that statute is to be binding, not merely on the assessor, but on the officer of the Inland Revenue? I think the opening passage of the section shows that that was not to be so, for it is there provided that in estimating the yearly value of lands and heritages under this Act the same shall be taken to be the rent which one year with another, &c. The rule is limited to valuations under that Act. If you once reach the conclusion that under this Act you are only providing a valuation roll for county and local purposes, then the rule which the assessor is to follow is a rule with reference to what is being done under that Act only, and so I think cannot affect the rules under which the surveyor of income-tax was bound to make up his valuation. Where the surveyor of income-tax is named assessor

for the county, there may be only one roll for all purposes, but that is not the case here.

The Court affirmed the determination of the Commissioners.

Counsel for Menzies (Appellant)—The Dean of Faculty (Fraser)—M'Kechnie. Agent—J. Young Guthrie, S.S.C.

Counsel for the Crown—Lord Advocate (Watson)—Solicitor General (Macdonald)—Rutherford. Agent—D. Crole, Solicitor of Inland Revenue.

Friday, January 18.

FIRST DIVISION.

[Bill Chamber, Lord Adam.

WILSON v. LINDSAY (WILSON & ARMSTRONG'S TRUSTEE).

Succession—Construction of Testamentary Letter—Whether it imported a Trust or an Absolute Disposition?

A lady died leaving a holograph testamentary writing in favour of her husband in the following terms:—"I wish to leave everything that may be considered mine—money or personal property—entirely at your disposal, knowing that you will do as I wish with it." Some small bequests in express terms followed. Held that the terms of the document imported an absolute gift to the husband, and that they did not make him a trustee for the purpose of carrying out his wife's wishes, whether expressed or not.

Mr Wilson, of the firm of Wilson & Armstrong, manufacturers, Hawick, was married on 8th November 1864 to Mrs Margaret Watson or Fitchie, and by antenuptial contract of marriage he renounced and discharged all his *jus mariti* and right of administration, right of courtesy, and every other right that would have been competent to him over the estate then belonging to her or to which she might succeed.

Mrs Wilson died on 29th April 1873, leaving a will in the form of a holograph letter addressed to her husband. This letter was as follows:—
"22d April 1869.

"My dearest George—I wish to leave everything that may be considered mine—money or personal property—entirely at your disposal, knowing that you will do as I wish with it. My case of jewels which you gave me are for Jane Law Graham, and my watch for Catherine Wilson. I do not wish to specify here who are to get my other little matters, as you will, I am sure, take a little trouble and divide them among my heirs. I would like you from the interest of my money to give Robert Watson, James Wilson, and last, not least, yourself, a handsome remembrance of me, although they should require to wait some time. "M. WILSON."

The estates of the firm of Wilson & Armstrong, and of the individual partners thereof, were sequestrated in the year 1875, after Mrs Wilson's death, and the respondent in this case, Mr Lindsay, was appointed trustee on their estates. Mr Wilson stated that in October 1864 Mrs Wilson's agents, acting under her instructions, remitted a

sum of £800 to him to invest on her account. It was put to Mrs Wilson's credit in the books of the firm, interest being thereafter regularly credited, and any sums drawn by her for her private purposes being debited. At Mrs Wilson's death there was a balance of £786, 15s. 11d. due to her, which amounted at the date of the sequestration to £984, 10s. Mr Wilson therefore claimed upon the bankrupt estate for this sum as his wife's private property, and on the ground that under her testamentary writing he was really a trustee for her, and must hold her property for the purpose of carrying out the wishes therein expressed.

The trustee rejected the claim, on the ground, that the sum in question, if it could be held to belong to Mrs Wilson as her separate estate, which he denied it did, became in any case vested in her husband at the date of her death, and was an asset of his private estate at the date of the bankruptcy.

Wilson appealed to the Lord Ordinary on the Bills.

The Lord Ordinary (ADAM) adhered to the trustee's deliverance and dismissed the appeal, adding the following note to his interlocutor:—

"*Note.*—It was maintained by the appellant that under the will of 22d April 1869 he was merely a trustee; that he held the property left by his wife in trust for the purpose of carrying out her wishes, as these had been expressed to him, viz., by applying it for the benefit of such of her immediate relatives as he might think best; that if the will was ineffectual because the beneficiaries were not named therein, then that there was a resulting trust for her next-of-kin, which equally excluded his own creditors.

"It will be observed that there is in the will no direction to apply the property for the benefit of any person or class of persons therein designed or described. The property is left 'entirely at your disposal, knowing that you will do as I wish with it.' The Lord Ordinary is not aware of any case in which there has been held to be an implied trust—where the objects of the gift have not been sufficiently designed or indicated in the will itself. He does not see who would have a title in this case to enforce the alleged trust against the alleged trustee.

"The Lord Ordinary does not think that this is a case of trust at all. He thinks it is a case in which the testator has made a beneficial bequest of her property to her husband under the burden of certain legacies. He thinks that the testator intended that her husband should have the uncontrolled disposal of her property, leaving to his goodwill merely to carry out her wishes. If this be the correct construction of the will, the money in question must necessarily be applied for the benefit of his creditors. The Lord Ordinary was referred to *M'Laren on Wills*, vol. i. p. 319, *et seq.*, and vol. ii. pp. 72, 73."

Wilson reclaimed, and during the course of the argument the Court remitted to the trustee "to inquire into the facts of the case and report."

The trustee reported at some length, but it is only necessary here to state that he found that at the date of her death, Mrs Wilson, assuming that the funds formed her separate estate, was in possession of the sum now claimed by her husband.

The question of law was then argued, whether the husband was to be held a trustee under the testamentary letter, or whether the estate was given to him absolutely, and was therefore attachable by his creditors?

Authorities—*Williams v. Williams*, 1851, 1 Simon's Rep. (N.S.), 358; *Knight v. Boughton*, 11 Clark and Fenelly, 513; *Lewin on Trusts*, 120; *Meredith v. Heneage*, 1827, 1 Sim. (Chan. Rep.) 542; *Green v. Green*, Feb. 3, 1869, 3 Irish Equity Rep. 90; *Lambe v. Eames*, March 9, 1871, 6 Law Rep. Chan. App. 597.

At advising—

LORD PRESIDENT—The question to be determined here is—Whether the claimer Mr George Wilson, under a testamentary paper left by his wife, became proprietor of certain money bequeathed by her, or whether he was merely made a trustee for certain other parties? Mr Wilson says that he is merely a trustee for his wife, and that the money should be handed over to him for the purposes of the trust. The trustee on his sequestrated estate says that this money is Mr Wilson's own property, and that therefore it belongs to his creditors. The decision depends on the construction to be put upon the testamentary paper. The trustee, upon his part, as at first advised, was not disposed to admit that there was any separate estate belonging to the wife, and in his deliverance he says that there were no vouchers or instructions to prove that there was really any such estate, and his deliverance proceeds therefore both on law and fact. First, he says that there is no evidence of there being a separate estate belonging to the wife in the hands of Wilson & Armstrong; and, in the second place, he says that even if there be such estate, it was carried by her will to the husband.

The Lord Ordinary followed the trustee, and affirmed his judgment, but when the case came before us we desired to settle the matter of fact, and accordingly we remitted to the trustee to report, and the effect of that was that it was found that there was such a fund to the amount of about £900. Now, that being so, the only question now to be decided is—Whether that sum was bequeathed in the testamentary paper absolutely to the husband, or whether it was given to him in a fiduciary character?

In construing this writing of April 22, 1869, we are not to be guided by any artificial rules. We must merely ask, what was the lady's intention when she made it? Taking the words in their natural and ordinary sense, I have arrived at the same conclusion as the trustee and the Lord Ordinary. Certainly, when taken alone, the initial words of the writing are quite unsusceptible of any meaning but one. They must mean that after her death everything she has is to belong unconditionally to her husband. But she adds, "Knowing that you will do as I wish with it." Now, that certainly expresses great confidence in the husband by the wife, but nothing more. Does it mean, "I have told you that I wish one particular thing to be done with the money, and I know that you will carry out my wishes?" Such an inference seems to me to be very forced. The words appear to me to import only that the wife had perfect confidence that her husband would dispose of the money as she would have

done herself had she taken the trouble to make a will. Still there are other sentences in her letter which are entitled to some consideration. She says—"My case of jewels which you gave me are for Jane Law Graham, and my watch for Catherine Wilson." Here are regular bequests, and no doubt these two ladies are entitled to be treated as legatees. Further, she adds—"I do not wish to specify here who are to get my other little matters, as you will, I am sure, take a little trouble and divide them among my heirs." Now, here is a testamentary purpose clearly expressed, and I think the husband is bound to give effect to it. But what is the subject of this testamentary purpose; it is "my other little matters." Now, taking these words with the others, this must mean her jewels and matters of that kind—in short, her parapherna. And no doubt the word "divide" is enough for testamentary purposes, and therefore may very fairly receive effect. This sentence with which I have just been dealing, and the previous one relating to the disposal of the jewels and watch, stand in contrast to the beginning of the letter, for here there is an expression of the subject and the object of the bequest, whereas in the other there is neither subject nor object specified.

Lastly, there comes this expression—"I would like you from the interest of my money to give Robert Watson, James Wilson, and last, not least, yourself, a handsome remembrance of me, although they should require to wait some time." Now, it is said that the bequest here of a handsome remembrance to the husband out of the interest is inconsistent with the view that the whole was to belong to him. At first this seemed plausible enough, but on further consideration it appears to me that there is perfect consistency between the bequest of the money and a wish that a handsome remembrance should be taken by the legatee from the interest of the principal sum. What this lady desired to give her husband and these other two gentlemen was not money, but a tangible remembrance—in fact, a keepsake—and this would properly be carried out by the purchase of mourning rings. They must be handsome, but something of that description is certainly meant. These are to be paid out of the interest of the capital sum. The money was left to the husband, with an expressed wish that he in the disposal of it should take into consideration what he thought she would have wished him to do with it. This left the matter entirely in his right, but under that expressed wish. Under these circumstances it is very natural that she should say that the keepsake should come out of the interest. So there is nothing inconsistent in the last part of the letter with the view that the husband was to have absolute control over the money. Therefore I am for adhering.

LORD DEAS—This is entirely a question of construction, and I agree with your Lordship that the sound construction of this letter is, that whatever belonged to the wife was placed entirely at the disposal of the husband, subject only to a few little gifts. If the first words had not been qualified there could not have been any doubt. Now, the first qualification is—"Knowing that you will do as I wish with it." She does not say "Do what I told you to do with it;" and it must be remembered that this document is dated in 1869, and

Mrs Wilson did not die till 1873. She did not write it with the idea that she was to die immediately, and evidently she had not given her husband precise instructions. In the latter part of the letter it is indicated that the sum of money is to go on bearing interest, for some keepsakes are to be paid out of the interest. But this only shows that the testatrix did not expect her husband to spend the money at once, for at the time when this letter was written he was a very rich man, and did not require to spend it. There is nothing substantial to show that the writer intended the money to be given in trust.

LORDS MURE and SHAND concurred.

The Court adhered.

Counsel for Wilson (Reclaimer)—Mackintosh.
Agents—Hope, Mann, & Kirk, W.S.

Counsel for the Trustee (Respondent)—
Kinnear—M'Laren. Agents—Mackenzie & Ker-
mack, W.S.

Saturday, January 19.

SECOND DIVISION.

[Lord Craighill, Ordinary.]

WELSH v. WELSH'S TRUSTEES.

Presumption—Parent and Child—Where a Father Pays his Son's debts.

In an action by a son against his father's trustees for payment of legitim, the defenders pleaded that various sums fell to be deducted in respect of advances made by the father to the son, which they said the son was bound to repay, or at all events to collate. These mainly consisted of two sums expended in payment of a debt contracted by the son and for which the father was not liable. The pursuer averred, in answer, that the debt had been paid with his money, handed to his father for that purpose. This was denied by the defenders.—*Held* that, apart from evidence, where a person pays the debt of another, he is *in dubio*, presumed to do so with the debtor's money; and that where the two parties stand to one another in the relation of father and son, that fact is not sufficient to overturn the presumption, although in that case it cannot be held to be so strong.

Authorities referred to—*Ersk. Inst. iii. 4, 6; Trotter v. Robertson, Jan. 20, 1672, M. 11,526; Dickson on Evidence, sec. 395; Webster v. Rennie, June 4, 1859, 21 D. 915; Douglas v. Douglas, Nov. 8, 1876, 4 R. 105; Ersk. Prin. iv. 2, 19.*

Counsel for Pursuer (Reclaimer)—Dean of Faculty (Fraser)—Nevay. Agent—W. N. Masterton, Solicitor.

Counsel for Defenders (Respondents)—Kinnear—R. Johnstone. Agent—T. J. Gordon, W.S.