

whole circumstances as now before the Court we have the ground taken, full possession enjoyed, and all that remains is that the owners shall be satisfied by private arrangement or otherwise. This was actually done—Mr Donaldson was himself present and in the chair at the meetings. Accordingly, we must hold that the Road Trustees in 1838 obtained a statutory title to the ground of the road.

What then remains? I cannot think that anything more could have been done. I agree with your Lordship that while the Donaldson trustees did give a disposition to the pursuers without excepting the road, yet in point of fact all parties were well aware that they were not transferring the right to this road, and I may use the illustration of an estate sold with an inclusive acreage, as is commonly done—an acreage embracing all public roads passing through the lands.

LORD GIFFORD—I have arrived at the same result. Though there may be some questions of nicety raised, yet I have not any doubt whatever that Donaldson's trustees and not the pursuers are entitled to receive the bond or the money it represents from the Road Trustees for this portion of the land of the late Mr Donaldson. The minutes of the Road Trustees show that Mr Donaldson was a party to the whole arrangement, and accordingly are very important, as indeed truly constituting the contract. He sold his ground to the Road Trustees for the purposes of the road only; he had agreed to accept a bond from them with postponed payment. He stood in the position of a postponed creditor and nothing else. Had Mr Donaldson died intestate, I think that this debt was moveable, and as such would have gone to his executor, while the estate as heritage would have passed to the heir-at-law. If that heir had sold the estate, he could not have sold a right to this price. Now, of course, there is no difference in the fact that a will actually was made.

Now, what did the Donaldson trustees sell? Did they sell the estate, or did they sell also the personal debt due to them? If we read the disposition we find no reference to this. It is a sale of the estate with the road on it. It is proper enough to include the road in the measurement of acreage, because many rights are left to the proprietor of the *solum*—as, for example, minerals and so forth. I confess that I am not at all moved by the fact that here the full acreage of 4 acres was disposed to the pursuers, for where a very wide road existed, for instance, you might afterwards actually have buildings put up in the road itself were it the absolute property of the Road Trustees, and not included in the titles of adjoining lands. Nothing short of an assignation of the debt would, I think, have been sufficient to transfer it if this had been intended, but I think it never was intended, and further that the debt never was transferred.

The Court adhered.

Counsel for Pursuers (Respondents)—Lord Advocate (Watson)—Trayner. Agent—H. B. Dewar, S.S.C.

Counsel for Defenders (Reclaimers)—Kinnear—Pearson. Agents—Cowan & Dalmahey, W.S.

Saturday, June 7.

SECOND DIVISION.

[Lord Adam, Ordinary.]

M'DONALD v. M'DONALDS.

(*Ante*, Jan. 16, 1879, and March 18, 1879, pp. 271 and 460).

Entail—Petition for Disentail—Expenses—Stat. 38 and 39 Vict. cap. 61 (Entail Amendment Act 1875), sec. 5.

In a petition for disentail, where a number of questions had arisen between the petitioning heir in possession and the second and third heirs in regard to the value of their expectancies in the entailed estate, and a great amount of litigation ensued, in which the petitioner was substantially successful—*Held* that in the circumstances neither party were entitled to expenses.

This case has already been reported (Jan. 16, and March 18, 1879, *ante* pp. 271 and 460), and the present question arose in regard to the expenses connected with the litigation which was the subject of the previous reports. After the proceedings reported *ante*, pp. 460, the case was remitted to the Lord Ordinary to proceed in accordance with the findings of their Lordships of the Second Division, and Lord Adam (Ordinary) after various procedure, and after having obtained reports from men of skill, pronounced the following interlocutor:—"In respect of consignment, in terms of the preceding interlocutor of May 27 current, dispenses with the consent of the respondents . . . Approves of the instrument of disentail: Interpones authority thereto, . . . and decerns; and having heard counsel on the question of expenses, finds no expenses due."

The respondents reclaimed, but afterwards stated that they would not offer argument against it. The petitioner then asked for the expenses of the litigation so far as the respondents had been unsuccessful. The Court held that the questions being novel and difficult, the respondents were entitled to appear in the circumstances, and refused the motion, but the Second Division adhered.

Counsel for Petitioner—Balfour—Pearson. Agent—A. P. Purves, W.S.

Counsel for Respondent—Kinnear—Robertson. Agents—Webster, Will, & Ritchie, S.S.C.

Friday, June 13.

FIRST DIVISION.

[Lord Curriehill, Ordinary.]

DEWAR v. URQUHART.

Succession—Testament—Titles to Land Consolidation (Scotland) Act 1868 (31 and 32 Vict. c. 101), sec. 20—Conveyance of Heritage—"Residue of my Estate."

A person in possession of heritable and moveable property left a holograph settlement in which he appointed an "executor," with power to assume other executors. He then made provision for the payment of certain debts and annuities, and went on to say